

OGC HAS REVIEWED.

29 September 1955

MEMORANDUM FOR: Director of Personnel

SUBJECT : Dual Compensation - Reserve Officers

REFERENCE : Memorandum from OGC to Director of Personnel,  
Dated 29 August 1955, Subject - "Dual Compensation"

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1. In a conversation on 29 September 1955, [ ] of your office raised the question of the applicability of dual compensation statutes to officers retired under the provisions of the Armed Forces Reserve Act of 1952. He particularly questioned whether such retired reserve officers were subject to the Act of 1894 (5 U.S.C., section 64) which provides that retired commissioned officers may not hold a second office if the compensation from either retirement or the second office amounts to \$2,500.00.

2. An opinion of the Comptroller General in 1948 (28 C.G. 367, 368) held that reserve officers whose names may be placed on the Army of the United States Retired List in accordance with Title III of P.L. 810, 80th Cong., 2nd Sess. (62 Stat. 1081, 1087) are not prohibited by the Act of 1894 from receiving compensation from a civilian position under the United States Government. The Comptroller General based his opinion on the fact that a clause of the National Defense Act of 1916 (10 U.S.C. 372) provided that:

"Members of the Officers' Reserve Corps, while not on active duty, shall not, by reason solely of their appointments, oaths, commissions, or status as such, or any duties or functions performed or pay or allowances received as such, be held or deemed to be officers or employees of the United States, or persons holding any office of trust or profit or discharging any official function under or in connection with any department of the Government of the United States."

The National Defense Act of 1916 was repealed in 1952 but a section of the Armed Forces Reserve Act of 1952 reenacted in substance the cited provision of the Act of 1916. The 1952 Act provides as follows:

"When not on active duty, members of the reserve components shall not be held or considered to be officers or employees of the United States, or persons holding any office of profit or trust or discharging any official function under or in connection with any department or agency of the United States, solely by reason of their appointments, oaths, commissions, or status as such, or any duties or functions performed or pay and allowances received as such." (50 U.S.C., section 981, 66 Stat. 495)

3. The General Accounting Office informs us that there has been no decision subsequent to 28 C.G. 367 on this subject. Consequently, in view of the provision of the Act of 1932 which is similar to the cited provision of the Act of 1916 it is the opinion of this Office that reserve officers who have been placed on the Retired List are not subject to the provisions of the Act of 1894 (5 U.S.C., section 62).

4. In his 1948 opinion the Comptroller General held that retired reserve officers were subject to the provisions of the Economy Act of 1932 (5 U.S.C., section 59a). That opinion would appear to have been based upon the wording of the Act of 1932 which differed from the wording of the Act of 1894 in that the Act of 1932 related to the receipt of retired pay while the 1894 Act related to the holding of a second office. 5 U.S.C., section 981 provides that members of reserve components not on active duty do not hold an office and therefore they are exempt from the 1894 Act but since the 1932 Act runs to the receipt of retired pay rather than the holding of an office retired reserve officers are still bound by its terms.

5. It is therefore the opinion of this Office that retired reserve officers are exempt from the provisions of 5 U.S.C., section 62, but are bound by the provisions of 5 U.S.C., section 59a. Therefore the conclusions reached in paragraph 3(a), (b) of our opinion of 29 August 1955 are held to pertain to retired reserve officers as well as other retired officers. Paragraph 3(c) of that opinion may be disregarded in connection with retired reserve officers.

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Office of General Counsel

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